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**BLAINE SLOAN LECTURE
CURRENT ISSUES IN EUROPEAN
INTEGRATION†**

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INTRODUCTION

In 1996, the Member States of the European Union will engage in an inter-governmental conference to shape the further development of the European Union. This conference was envisaged in accordance with the provisions of the Maastricht Treaty on European Union¹ (TEU) of February 7, 1992, which itself marked a significant stage in the progress towards European unity, but recognised that further steps were necessary to

† This article is based on the the Eighth Annual Blaine Sloan lecture delivered by the author at the Pace University School of Law on September 21, 1994. Presented in honor of Blaine Sloan, Professor Emeritus of International Law at Pace University, the lecture series is delivered each year to the University and Law School Community in order to promote scholarly debate in international law.

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¹ MAASTRICHT TREATY ON EUROPEAN UNION, Feb. 7, 1992, 31 I.L.M. 247 [hereinafter TEU].

achieve that aim.² Amongst the issues to be debated will be questions concerning the time-table for European Economic and Monetary Union³ (EMU), further political integration and the creation of a European Political Union (EPU), a strengthened common foreign and security policy, and increased power or competence for the Union in areas such as immigration, police affairs and asylum. These discussions will be conducted against the background of a wider debate on the desirability of "broadening and deepening" the Union. These jargon words raise two complex issues: first, the question of broadening the Union, that is, increasing the membership to include new Member States, and second, that of deepening Union/Community powers, that is, transferring competence from the Member States to the Union/Community in different areas of substantive law-making.

This article first sketches the constitutional development of the Community, leading to the formation of the European Union.⁴ Thereafter, it will discuss the challenges facing the Union in the years to come.

FROM THE FOUNDING TREATIES TO THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

Following the devastation caused by World War II, a movement gained force in Europe with the aim of promoting closer European unity. Guided by visionaries such as Jean Monnet, and by statesmen of the caliber of Adenauer, de Gasperi, Schuman,⁵ Spaak and others, this led first to the establishment, under the Treaty of Paris of April 18, 1951, of the European Coal and Steel Community⁶ (ECSC), set up by Germany, France, Italy, The Netherlands, Belgium and Luxembourg. The

² *Id.* art. N(2).

³ See generally, RICHARD CORBETT, *THE TREATY OF MAASTRICHT FROM CONCEPTION TO RATIFICATION: A COMPREHENSIVE REFERENCE GUIDE* (1993).

⁴ See generally, D.A.O. Edward, *Nations, States, People & Commerce*, John Napier Memorial Lecture, Napier University, (Nov. 3, 1992).

⁵ See generally, GEORGE A. BERMAN ET AL., *CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW* 5 (1993) [hereinafter BERMAN] (for a brief history and discussion of Jean Monnet, the great French proponent of European integration, and Robert Schuman, France's Foreign Minister).

⁶ TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, Apr. 18, 1951, 261 U.N.T.S. 140 [hereinafter ECSC]

importance of the ECSC should not be minimised: it showed that previous irreconcilable enemies could work together with a common aim in a close supranational context. The ECSC also provided a model for future steps towards European unity.

The European Economic Community (EEC) came into being following the ratification of the Treaty of Rome of March 25, 1957⁷ by the same six States which had established the ECSC. Whereas the aim of the ECSC had been to create a single market in coal and steel and place these materials under the control of a supranational authority, the aims of the EEC were wider. Although as its name would indicate, it was ostensibly an economic Community, in fact its goals were more ambitious. In wording clearly inspired by the American federal experience, the founding Member States stated in the Preamble to the EEC Treaty that they were "determined to lay the foundations of an ever closer union among the peoples of Europe."⁸ Indeed it was clear that the technique chosen by the Treaty-makers, following failed attempts in the 1950's to create the over-ambitious European Defense Community and the European Political Community, was to proceed slowly, using economic integration as the vehicle to arrive at political integration.

The EEC Treaty⁹ provided for four Institutions: the Assembly (later to be called the European Parliament), the Council of Ministers, the Commission and the Court of Justice. The EEC Treaty provided for the establishment of a common market, based on four fundamental freedoms, the free movement of persons, goods, capital and services, flanked by common policies in fields such as foreign trade, agriculture, transport, competition, and social matters, and with Community powers as regards the harmonisation of the laws of the Member States to achieve the aims of the Treaty.

The great absentee from these organisations was the United Kingdom, which had been invited to participate in the negotiations preceding the EEC Treaty but decided to adhere to the Community. The reactions to the creation of the EEC provided the political momentum necessary to create an alterna-

⁷ TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC].

⁸ See *Id.* preamble.

⁹ See *Id.* art. 4.

tive trade bloc. On January 4, 1960, the European Free Trade Association¹⁰ (EFTA) was signed in Stockholm by the United Kingdom, Denmark, Norway, Sweden, Austria, Switzerland and Portugal. Finland, Iceland, and Liechtenstein subsequently adhered. In 1973, the United Kingdom and Denmark acceded to the Community, and in 1986, Portugal. As will be mentioned below, most of the remaining members of EFTA are currently in the process of acceding to the European Union.

Ireland acceded to the Community in 1973, together with the United Kingdom and Denmark. In 1979, Greece, and in 1986, Spain, as well as Portugal joined the Community, bringing the total number of members to 12.

The early experience of the EEC was marked by difficulties, largely as a result of Member State insistence on not being outvoted at Council of Ministers level. In 1966, the French Government adopted an "empty-seat" policy, consisting of not sending representatives to Community meetings: this led to the conclusion of the so-called Luxembourg Compromise¹¹ whereby effectively a Member State was allowed to invoke "very important" national interests in order to prevent the adoption of Community legislation. Although not provided for in the Compromise, this effectively gave Member States a veto power over Community legislation. The Compromise successfully deprived the Community Institutions, and especially the Commission, of much of their self-confidence and momentum.

In these circumstances, the role of engine of integration fell increasingly to the Court of Justice. Whereas some effective progress was made in this period towards achieving the aims of the Community, the completion of the common market made fitful progress.¹² Some fifteen years of Euro-sclerosis and Euro-pessimism passed before concrete steps were taken to renew faith in Europe as an ideal.

¹⁰ CONVENTION ESTABLISHING THE EUROPEAN FREE TRADE ASSOCIATION, Jan. 4, 1960, 370 U.N.T.S. 3 [hereinafter EFTA].

¹¹ NIGEL FOSTER, BLACKSTONE'S EC LEGISLATION 146 (1993) *citing* Bull. EC 3-1966 point 9.

¹² In this period, the working and accountability of the Institutions was improved, some steps were taken to promote political and monetary co-operation including the creation of the European Monetary System, there was budgetary reform, the development of the European Council and direct elections to the European Parliament.

In 1981, the Genscher-Colombo plan, symbolically and appropriately emanating from the two European defeated Axis powers, called for the progressive transformation of the Community into a new entity to be called a "European Union."¹³ This had its follow-up in the Solemn Declaration on European Union, concluded at Stuttgart on June 19, 1983, to which all the Member States subscribed.¹⁴ In 1984, the European Parliament adopted a draft Treaty on European Union,¹⁵ product of the vision of Altiero Spinelli.¹⁶ Nevertheless, it seemed almost impossible that the idealism of the few could be translated into political reality, but the decision of the European Council (composed of the President of France and the Heads of Government of all the Member States) of June 25-26, 1984 (the Fontainebleau Summit) to set up the Dooge Committee (modelled on the Spaak Committee responsible for the process which led to the signature of the EEC Treaty) on European co-operation in both the Community field and that of political, or any other, co-operation marked a decisive political step which led to the quickening of the tempo of European integration. At the same time, the European Council also set up the Addonino Committee on a People's Europe. The subsequent reports¹⁷ were presented to the Milan Summit on June 28-29, 1985 as was a White Paper produced by Lord Cockfield, the Commissioner with responsibility for the internal market, which identified the remaining barriers to trade within the Community and proposed a timetable for their elimination by the end of 1992.¹⁸ The European Council decided to convene a conference within the meaning of Article 236 of the EEC Treaty¹⁹ for the purpose of amending the EEC Treaty to take account of both the Dooge Committee recommendations and the White Paper.

¹³ See Pauline Neville-Jones, *The Genscher/Colombo Proposals on European Union*, 20 COMMON MKT L. REV. 685 app. (1983).

¹⁴ Bull. EC 6-1983, point 1.6.1.

¹⁵ 1976 O.J. (L 278) 1.

¹⁶ See THE EUROPEAN UNION TREATY (Capotorti et al. eds., 1986).

¹⁷ Dooge Committee Report, Bull. EC 3-1985, point 3.5.1.; Addonino Committee Report, Bull. EC supp. 7/85 (1985).

¹⁸ Completing the Internal Market: White Paper from the Commission to the European Council, COM (85) 310 final.

¹⁹ EEC, *supra* note 7, art. 236.

The outcome of the conference was the Single European Act²⁰ (SEA), signed on February 17, 1986 (by nine Member States excluding Ireland, Denmark and Greece) and February 28, 1986 (by Ireland, Denmark and Greece).

The SEA gave renewed vitality to the Community. It is no accident that it came at a time of economic dynamism: as President Delors has remarked, the Community draws its dynamism from the economy.²¹ It attempted to remedy the stasis which had been created in Community legislation by providing for qualified majority voting in many areas, though for sensitive areas, unanimity was still required. It strengthened the powers of the European Parliament (which has been directly elected by the people of Europe since 1979)²² by providing for a cooperation procedure²³ whereby the Parliament was more involved in Community legislation, though the last word still remained with the non-elected Council of Ministers, representing the Member States. It provided for cooperation between the Member States in foreign policy, recognising a practice of cooperation which had grown up in preceding years. Most importantly, however, the SEA provided, by inserting a new Article 8a of the EEC Treaty that:

[t]he Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992. . . . The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.²⁴

Implicitly, the SEA is a recognition that the original EEC Treaty provisions on establishing the common market had not been realised. The new move towards the internal market must be seen however in its political context: in the Preamble to the Single European Act, the Member States declare that they are

²⁰ Single European Act, 1986 O.J. (L169) 1 [hereinafter SEA].

²¹ Address to the European Parliament on the Occasion of the Investiture Debate of the New Commission, Feb. 10, 1993, Bull. EC supp. 1/93, point 9.

²² Act Concerning the Election of Representatives of the European Parliament by Direct Universal Suffrage, 1976 O.J. (L 278) 1.

²³ EEC, *supra* note 7, art. 149 *repealed* by the TEU.

²⁴ EEC, *supra* note 7, art 8a *added* by art. 13 of the SEA; Now art. 7a EC, as amended by the TEU.

[m]oved by the will to continue the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their States into a European Union, in accordance with the Solemn Declaration of Stuttgart of 19 June 1993.²⁵

The aim of the treaty-makers thus remains unchanged: the aim of the Community is political union, with economic convergence and integration being used as the vehicle to achieve that political union.

Since the signature of the Single European Act, the speed of integration within the Communities increased, goaded by the (legally uncertain) deadline of December 31, 1992,²⁶ but the Community took on a new significance vis-à-vis the rest of the world. The Euro-pessimism mentioned above was replaced, briefly, by Euro-euphoria, and has since stabilised at a more realistic pitch.

In addition, a series of momentous events which may genuinely be characterised as epochal milestones took place in rapid succession and the Community had to respond to these great historical changes. The fall of the Berlin Wall, German integration and the dismantlement of the CMEA posed enormous challenges to the Community. However, with a renewed confidence born of the success of the SEA, and with a confidence in the Community as an organisation which had often seemed lacking before, the Member States showed a political will and a speed of reaction which was slightly surprising. Thus, German unification was quickly accepted, and the five East German Länder became part of the Federal Republic of Germany, and thus part of the Community. Agreements were speedily concluded with the Central and East European countries formerly in the Soviet bloc.

At the same time, the Community was also developing closer relations with the EFTA countries.²⁷ Previously, the EFTA countries had bilateral Free Trade Agreements with the

²⁵ Single European Act, 1986 O.J. (L 169) 1.

²⁶ See A.G. Toth, *The Legal Status of the Declarations attached to the Single European Act*, 23 COMMON MKT L. REV. 803 (1986); Compare H.G. Schermers, *The Effect of the Date 31 December 1992*, 28 COMMON MKT L. REV. 275 (1991).

²⁷ See generally, *CREATING A EUROPEAN ECONOMIC SPACE: LEGAL ASPECTS OF EC-EFTA RELATIONS* (Mary Robinson and Jantien Findlater eds., 1990); *WIDENING THE COMMUNITY CIRCLE* (Clive Church ed., 1990). See also the special number of

EEC,²⁸ which they entered into in 1972, as the United Kingdom and Denmark, two of its founding members were planning to accede to the three European Communities. The Agreements did not provide for any judicial system for the resolution of disputes. Cooperation with the Community was first on a bilateral level, and subsequently, after the completion of the free trade area in 1984, increasingly on a multilateral level. Relations were largely on the commercial level, in recognition of EFTA's role as a trade organisation (it acquired a political dimension in the 1980's).²⁹ However, even in the trade agreements, there was a stated readiness to develop closer links in line with increased integration within the Community.³⁰

The first EC-EFTA ministerial meeting, attended by the Ministers for Foreign Affairs of the EC and EFTA countries and the EC Commission, was held in Luxembourg on April 9, 1984, and ended with the so-called Luxembourg Declaration which called for increased cooperation between the two blocs. The Declaration contained the first reference to the notion of a European Economic Space or Area.³¹

the Journal of Common Market Studies (XXVIII/4, June 1990) on the European Community, EFTA and the new Europe.

²⁸ Such agreements were concluded by Austria, Portugal, Sweden, Switzerland, Finland, Norway and Iceland. See Ulf Bernitz, *The EEC-EFTA Free Trade Agreements with Special reference to the Position of Sweden and the Other Scandinavian EFTA Countries*, 23 COMMON MKT. L. REV. 567 (1986).

²⁹ Jön Baldvin Hannibalsson, *Introduction to CREATING A EUROPEAN ECONOMIC SPACE: LEGAL ASPECTS of EC-EFTA Relations* (Mary Robinson and Jantien Findlater eds., 1990).

³⁰ Jerome Lugon, *The EFTA Relationship to the Community Circle*, in WIDENING THE COMMUNITY CIRCLE 18, 21 (Church ed., 1990).

³¹ The Declaration called for pragmatic and flexible cooperation beyond the free trade agreements, as a natural extension of trade relations. The subjects envisaged as the subjects of such cooperation went far beyond trade, and included research and development, social protection, working conditions and education, as well as agriculture, fisheries, transport, energy, the environment, tourism and intellectual property. Some twenty or more expert groups were formally constituted as part of the process of discussion, consultation and cooperation within the framework of the Luxembourg Declaration, in addition to regular high-level meetings of high officials from the EFTA countries and the Commission. There were also more informal consultations as well as a "vast number of informal contacts." No institutional structure or legal framework was created for the cooperation within the context of the Luxembourg Declaration. The agreements which ensued were for the most part bilateral, and the result of an ad hoc rather than a structured and systematic approach. The EC and EFTA countries also entered into the Lugano Convention, 1988 O.J. (L 319) 9, based on the Brussels Convention, and which itself

A new more political relationship between the Community and the EFTA was suggested by President Delors in a speech to the European Parliament on January 17, 1989, in which he proposed that the EFTA countries should enter into a new form of partnership with the Community, with common decision-making and administrative institutions. The Delors proposal came at a time when the EFTA countries themselves were considering new ways of multilateral cooperation with the Community. There were growing doubts within these countries as to whether the pragmatic ad hoc cooperation started by the Luxembourg Declaration would be sufficient in order to enable them to keep pace with the increased dynamism of the Community's internal market programme.³² It was apparent that a more comprehensive and ambitious approach than that offered by the network of free trade and other bilateral agreements on the one hand, and the cooperation resulting from the Luxembourg Declaration on the other, was needed.

The Delors proposal was informed by three concerns. First, it recognised the need for a wider EC-EFTA cooperation. This called for a new approach as there needed to be a coordination of the different fields of cooperation between the two blocs, since a compartmentalised approach could lead to fragmentation.

Second, the EEA suggested by President Delors was intended to be an alternative, at least initially, to accession. The Commission, subsequently supported by the Council, had already taken the view in April 1988 that new accessions before 1993 should be ruled out, and that negotiations should not be started before that date. The EEA was thus a means of deepening the EC-EFTA relationship without implying accession. It should also be remembered that at the time of the Delors proposal, no EFTA country had applied for accession, and the current interest of the EFTA countries in acceding to the Community, discussed below, was not foreseeable with certainty in most cases (except that of Austria) at the time.

Third, even during the period when EFTA countries, which were potential applicants for accession, were excluded by the

served as the basis for the San Sebastian Convention, 1989 O.J. (L 285) 1; as a result of these conventions, the EC and EFTA countries created a European framework for jurisdiction and enforcement in civil and commercial matters.

³² Hannibalsson, *supra* note 29, at 3.

position of principle taken by the Commission and Council, just referred to, and which, given the length of accession negotiations could last well into the mid-1990's, the creation of the EEA would permit the extension of the single market to the EFTA countries and significantly enhance the benefits offered by that market.

The creation of a homogeneous market between 19 countries was at the heart of the Delors proposal and it was certainly this aspect which spurred EFTA interest in creating an institutional structure for closer relations with the Community. In 1990, 58% of EFTA exports were to the Community.³³ The EEA market comprises some 380 million consumers, accounts for more than 46% of world trade,³⁴ and 30% of world production.³⁵ Although the benefit is greater for the EFTA countries than for the EC Member States,³⁶ the EFTA consumers represent one of the most affluent markets in the world, with an average purchasing power one third higher than in the EC.³⁷

The Delors proposal met with a favourable reaction both from the Oslo summit of the EFTA countries in March 1989, and from the Foreign Affairs Council, meeting a week later in Brussels. On June 18, 1990, the EC Council of Foreign Ministers approved the recommendation for a Council Decision submitted by the Commission in May 1990 following pre-negotiations with the EFTA countries authorising the Commission to negotiate, on behalf of the Community, an agreement with the EFTA countries "speaking with a single voice" on the creation of the EEA. Negotiations started officially on July 1, 1990. Agreement was reached on October 22, 1991, but the agreement was not initialled.³⁸ Renegotiations followed as in Opinion 1/91, the European Court of Justice held that the draft

³³ Charles LeadBeater, *European Economic Treaty; Politicians Follow Where Business has been Forced to Tread*, THE FINANCIAL TIMES, Oct. 23, 1991, at 3.

³⁴ *Id.* The EEA market accounted for 47.2% of total exports and 46.4% of imports. *Id.*

³⁵ *Id.*

³⁶ *Lest a Fortress Arise*, THE ECONOMIST, Oct. 26, 1991, at 81.

³⁷ Lugon, *supra* note 30, at 25.

³⁸ Initialling was planned for 18 November 1991. Oddly, the Community had intended to go ahead with the initialling despite its request for an Opinion, even though the Court had not given its ruling. However, when the Court asked questions of the Commission, the Council and the Member States, and announced that it would not hold an oral hearing, the initialling was postponed.

Agreement was not compatible with Community law,³⁹ and final agreement was reached on February 14, 1992. In Opinion 1/92, the European Court of Justice held that the revised draft agreement was compatible with Community law.⁴⁰ The Agreement was initialled on April 14, 1992, and was signed at Oporto on May 2, 1992.

The negotiations were based on the starting point that the EFTA countries would accept the "*acquis communautaire*," that is, the entire body of Community law, as contained in the Treaties, Acts of Accession, legislation and the case-law of the European Court of Justice (with exceptions justified in the case of the protection of fundamental interests) as the common legal basis for the EEA. This would not however include the Common Agricultural Policy (CAP), which would not be covered by the Agreement. Partly because of this, it was accepted from the start that the EEA would not be a market without frontiers, as border controls would remain.⁴¹ The essence of the agreement however was the wholesale adoption by the EFTA countries of Community legislation on the four fundamental freedoms and flanking policies, referred to above, which constitute the heart of the EEC Treaty.⁴²

³⁹ 1991 E.C.R. I-6079.

⁴⁰ 1992 E.C.R. I-2821.

⁴¹ Hannibalsson, *supra* note 29, at 4.

⁴² It is centered on extending the four freedoms in the EEC Treaty to the whole of the EEA. The Agreement thus provides for the free movement of goods, persons, services and capital, although border controls will remain. Customs duties and quantitative restrictions on imports and exports and measures having equivalent effect are prohibited. There is a protocol on rules of origin and reviews of the rules of origin will take place every two years. The exceptions provided by Article 36 of the EEC Treaty are reproduced, as are the prohibitions of discriminatory internal taxation contained in Articles 95 and 96 of the EEC Treaty. Article 37 of the EEC Treaty, on State monopolies of a commercial character, is also transposed.

Although the CAP is not covered by the Agreement, as the EFTA countries are to maintain their own policies, there is an evolutionary clause whereby the parties agree to review agricultural issues. Veterinary and phytosanitary arrangements are provided, as are arrangements for fish and other marine products.

There are provisions regarding the simplification of border controls and cooperation in customs matters. The Agreement does not provide for common external tariffs, hence it is not a customs union, but Contracting Parties considering the reduction of the level of duties or charges having equivalent effect applicable to third countries benefiting from most-favoured nation treatment must notify the EEA thirty days before such change comes into effect and must take note of any

When it became apparent that the EFTA States would be excluded from political participation in the decision-making concerning the rules which were the subject of the Agreement, the judicial system to be provided by the Agreement assumed, in the view of the EFTA States, the complexion of a compensating mechanism for this exclusion. Thus, when the Court of Justice effectively ruled out, in Opinion 1/91, the possibility of establishing an EEA Court, the EFTA negotiators publicly linked the judicial mechanism with political participation and declared that the impossibility of the former made concessions on the latter imperative.⁴³ The negotiations nearly foundered on several occasions.

The Agreement on the European Economic Area (hereinafter referred to as the Agreement and the EEA respectively) of May 2, 1992 gave the legal basis for greater integration in Europe, by permitting the establishment of a dynamic and homogeneous free trade area. The Agreement is in the form of a global association agreement. The Agreement brings closer the Member States of the EC and the countries of EFTA. Almost immediately, and in some cases even before, the majority of the EFTA States applied for full membership of the EEC, as it then was. The Agreement is interesting as it could serve as a model for the association of other States with the Community prior to or in substitution for accession.

The Agreement does not alter a number of important areas. It does not seek economic and monetary union, nor does it, for example, provide for fiscal harmonisation, or for the application

representations by other Contracting Parties regarding any distortions which might result therefrom.

Anti-dumping measures, countervailing duties and measures against illicit commercial practices shall not be applied in relations between the Contracting Parties, unless otherwise specified.

The Agreement provides for the easing of restrictions on capital movements, but maintains some restrictions on some direct investments and on some real property investment.

Finally, the Agreement provides for a solidarity or cohesion fund in order to remedy the regional and social disparities within the Community. Promoted in the context of the negotiations, largely at the insistence of Spain and Portugal, the cohesion fund provides for 1.5 billion ECU in soft loans at 3 per cent, and five annual grants of some 500 million ECU in total. The beneficiaries of the fund are Portugal, Greece, Ireland, Northern Ireland and parts of Spain.

⁴³ INTERNATIONAL HERALD TRIBUNE, Dec. 16, 1991, at 1; *see* INTERNATIONAL HERALD TRIBUNE, Dec. 17, 1991 at 13.

of the CAP. As border controls are maintained, the EEA does not reap the full advantages of the internal market. Moreover, the foreign relations of the EFTA countries with the rest of the world are not modified, nor is there any requirement to create an EEA approach in foreign and security policy, or cooperation in judicial and home affairs. Although it is increasingly clear that joint strategies are required on some matters of common concern, such as immigration, even within the context of inter-governmental cooperation, the EEA does not make such provision.

It should be noted that in some respects, the Agreement merely reflects an existing situation, which is now given a legal and institutional context. Thus, the Community's technical standards, for example, were already largely, even overwhelmingly, met by the EFTA countries.

The Agreement is a mixed agreement.⁴⁴ The justification for this is that some matters dealt with in the Agreement (such as political dialogue) are not at first sight within exclusive Community competence. However, these are marginal to the thrust of the Agreement. Mixed participation could have been avoided by a parallel agreement between the Member States and the EFTA States on these matters allowing participation in the EEA Agreement by the Community alone with the EFTA States, and it is believed that this would have been the solution which the Commission would have favoured.

This then was broadly the situation at the time of signature and subsequent ratifications of the TEU, discussed below. However, it was clear that Europe, as an entity, had yet to define itself. The Community has become the magnet for its neighbours, both East and South, who see in Europe the means by which to achieve their economic aspirations. The Community itself, as extended by the EEA (which has added another 30 million of some of the most sophisticated consumers in the world to the internal market), is now also a focus of attention on the world stage. The United States, which had been inclined to believe that the next century would be centred on the Pacific Rim, has become aware of the potential and competition which Europe offers, hence its concern over a "fortress Europe." The

⁴⁴ See generally, *MIXED AGREEMENTS* (David O'Keeffe & Henry G. Schermers eds., 1992).

Community as an entity is also increasingly an actor on the world stage, particularly and most visibly in the GATT. Such was the belief in the inevitability of Europe that the lack of political co-ordination during the Gulf War was seen as proving rather than disproving the imperative need to achieve a common foreign and security policy.

II. THE NATURE OF THE COMMUNITY LEGAL ORDER

The role played by the Court of Justice has been fundamental in shaping the Community. From the very beginning, it recognised that Community law constituted a new form of international law. It recognised the individual as well as the Member States and the Community institutions as being subjects of law in this new legal order, and it held that individuals could invoke Community law before the national courts. It also emphasised that accession to the Community implied the transfer to it by the Member States of sovereignty in certain limited fields.⁴⁵ It fashioned the principle, nowhere discernible in the Treaty, that Community law should take priority over national law,⁴⁶ and that where there was a conflict, the national judge before whom a case of such conflict arose, was bound to apply Community law,⁴⁷ even if this were subsequent to the Community law provision in question. It created principles familiar to students of federal systems such as pre-emption.⁴⁸ Very importantly, the Court also recognised that the Treaty was not complete, and it acknowledged that certain general principles of law, including respect for fundamental human rights, were part of the Community legal order, which must be respected by the Community legislator, and by national courts applying Community law. Recently, the Court has also held that an individual may, under certain circumstances, sue the State for a breach of Community law which has caused him or her harm and which may be imputable to the State.⁴⁹

In Opinion 1/91 on the EEA Agreement, the Court made a major contribution to its case-law on the Community's constitu-

⁴⁵ ECR 1. Case 26/62, *Van Gend en Loos*, 1963 E.C.R. 1.

⁴⁶ Case 6/64, *Costa v. ENEL*, 1964 E.C.R. 614.

⁴⁷ Case 106/77, *Simmenthal*, 1978 E.C.R. 629.

⁴⁸ See U.S. CONST. amend X.

⁴⁹ Case C-6/90 *Francovich v. Italian Republic*, 1991 E.C.R. I-5357.

tional character. The Court had previously held in *Les Verts*⁵⁰ and repeated in *Zwartveld*,⁵¹ that the Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty. The reference in Opinion 1/91 characterising the EEC Treaty as the constitutional charter of a Community based on the rule of law is therefore not new. However, this reference to constitutional values is externalised in the present case, where constitutional values not only prevented the signature of the Agreement as originally negotiated by the Commission, but also prevented a modification of Article 238 of the EEC Treaty for the purposes of the Agreement.

Even though Article 228 of the EC Treaty provides for entry into force of an agreement which has been the subject of an adverse opinion by the Court of Justice in accordance with Article 236 of the Treaty, it would seem that the Court rules this out where an amendment would conflict with Article 164, or more generally, the very foundations of the Community. In this way, it may be that the Court is establishing a hierarchy within the Treaty, of certain norms which constitute the foundations of the Community and which constitute points of reference by which amendments are to be judged. If this interpretation is correct, it marks another and major step in the constitutionalisation of the Community.

It would therefore seem that the Court has limited the nature of the modifications which the Member States may make to the Treaty. This signals the further development of the Community legal order as a new legal order of international law. The sovereignty of the treaty-makers has been curtailed in so far as they cannot make amendments which conflict with the "very foundations" of the Community. This is reminiscent of Opinion 1/76,⁵² where the Court had discerned "a change in the internal constitution of the Community by the alteration of essential elements of the Community structure" which was incompatible with the Treaty.⁵³

⁵⁰ Case 294/83, *Les Verts v. European Parliament*, 1986 E.C.R. 1339.

⁵¹ Case C-2/88 *Imm., Zwartveld and Others*, 1990 E.C.R. I-3365.

⁵² Opinion 1/76, 1977 E.C.R. 741 ¶ 12.

⁵³ 1977 E.C.R. 741, ¶ 12.

The Court's approach in Opinion 1/91 also recalls the consultative competence provided by Article 96 of the ECSC Treaty. Under the third paragraph thereof, subsequent Treaty amendments concerning the matters dealt with therein may not conflict with the provisions of Articles 2, 3 and 4 of that Treaty or interfere with the relationship between the powers of the High Authority and those of the other institutions of the Community. Moreover, such amendments must be presented to the Court. In its Opinion of December 17, 1959, the Court characterised this Article as allowing an amendment under its provisions "only where it does not interfere with the general structure of the Treaty or the relationship between the Community and the Member States."⁵⁴ However, it should be noted that the Court was speaking in that Opinion in the context of a provision allowing "minor" amendments to the ECSC Treaty, and did not fetter the amendment procedure provided by Article 96 of that Treaty. These are substantial differences compared to Opinion 1/91.

The importance of the Court's role as a genuinely impartial supranational forum for judicial review cannot be over-emphasised, particularly in moments of legislative inactivity. Since 1989, there is also a Court of First Instance, attached to the Court of Justice, the jurisdiction of which was enlarged on June 8, 1993 by the Council. Under Council Decision 93/350⁵⁵ amending Decision 88/591 establishing a Court of First Instance of the European Communities,⁵⁶ the Court of First Instance is given jurisdiction as regards certain classes of action brought by natural or legal persons including State aids and the non-contractual liability of the Community, in addition to its existing jurisdiction in proceedings brought by natural or legal persons which had been limited to staff cases, coal and steel cases and competition cases, as well as related damages claims.⁵⁷

⁵⁴ 1959 E.C.R. 259, 268.

⁵⁵ 1993 O.J. (L 144) 21.

⁵⁶ 1988 O.J. (L 319) 1 amended 1988 O.J. (C 2215) 1.

⁵⁷ *Id.*

III. THE MAASTRICHT TREATY ON EUROPEAN UNION⁵⁸

In 1990, the Member States convened two intergovernmental conferences (IGCs) on EPU and EMU respectively. In my opinion, the Member States were motivated to proceed in this way by two major factors: first, the success of the SEA and of the internal market program inspired further confidence in what could be achieved in the short term in order to achieve economic integration, leading to political integration. Economic and monetary union was seen as part of this process. In addition, the economic downswing already felt in the United States had not yet reached the European economies. The second reason, I submit, relates to the events which have been described above: the fall of the Berlin Wall and the unification of Germany. There was a brief interval between German unification, which was perfected on October 3, 1990 and the collapse of the Soviet bloc. It was in this period that the Member States were keenly anxious to anchor the united Germany to the Community, rather than to look east-ward to the Soviet Union, which still appeared to be a viable option.

History has its ironies. As the TEU was being negotiated, virtually all of the factors influencing the starting of negotiations disappeared. Thus, the economy in Europe entered into recession, the Soviet bloc no longer constituted an appealing focus of interest for the united Germany, and most of all, cracks began to appear in the faith which the public had in the European integration process. This last point is not surprising. In so far as the end of the Cold War took away some of the security-related concerns for a united Europe, so the very success of the internal market program seemed, at least in the minds of non-specialists, to suggest that the aims of European integration had been achieved.

The IGC's lasted for a year. Agreement was reached on the text of the Treaty in December 1991, and the Treaty was signed at Maastricht on February 7, 1992.

What was achieved at Maastricht by the TEU was startling. The Member States created a European Union, which would co-exist with the Community. Acting as the Union, the

⁵⁸ For an analysis of the Treaty, see DAVID O'KEEFE AND PATRICK M. TWOMEY, *LEGAL ISSUES OF THE MAASTRICHT TREATY* (1994).

Member States would cooperate in areas such as Foreign and Security Policy, and Justice and Home Affairs (including immigration and asylum) without surrendering sovereignty. Citizenship of the Union was created, to co-exist with national citizenship.

Within the Community, the Member States agreed to a series of deadlines to achieve EMU. The final deadline for the entry into force of EMU is stated to be January 1, 1999.⁵⁹ At that point, the relationship between the currencies of the Member States who will participate in EMU will be irrevocably fixed, and steps will be taken to proceed to a single currency, the ECU.⁶⁰

Second, the Member States agreed to strengthen further the powers of the European Parliament, by instituting a co-decision procedure, which gives the European Parliament the right of veto over legislation in certain cases.

The TEU also gives the Community a series of new "virtual" competences in a range of areas such as education, vocational training and youth policy, cultural policy, public health, consumer protection, industry, research and technological development, the environment and development cooperation.

The TEU introduced into the Treaty a general principle known as the principle of subsidiarity,⁶¹ to which action taken under the Treaty is subject. Under this rule, which rings like a State-federal division of competence,

[t]he Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

⁵⁹ TEU, *supra* note 1, art. 109j.

⁶⁰ TEU, *supra* note 1, art. 109l(4).

⁶¹ Previously, the subsidiarity principle had been contained as a specific, rather than a general rule, as regards the environment, in Article 130r(4) of the EEC Treaty, a provision added to the EEC Treaty by the SEA.

As yet, the principle of subsidiarity has not been tested before the European Court of Justice. There is dispute over the meaning of the principle, and as to whether it may be applied by the European Court.⁶²

One of the criticisms levied on the TEU is that it introduces a new form of Treaty-making by mixing in one document matters falling under Community competence and matters falling under Member State competence which they agree under the TEU to treat inter-governmentally, that is, in cooperation.⁶³ There is no doubt that this is true, and indeed the document produced at Maastricht has destroyed the remarkably coherent structure and symmetry of the original EEC Treaty. The reason for the form chosen is evident. Member States were willing to give the Community new or extended competence in some areas, but not in all. In specific areas, Member States considered that it was essential to national sovereignty to retain powers over certain issues, but nevertheless wished to cooperate with the other Member States, using the Community structures and institutions, without engaging in the transfer of sovereignty which a transfer of competence to the Community would entail. This was the case with regard to Title VI, TEU, entitled Justice and Home Affairs, dealing with immigration and asylum matters, and with the Common Foreign and Security Policy, regulated by Title V, TEU.⁶⁴

However, it appears to me to be a mistake consider that these two Titles, which together with Articles A-F and L-S, TEU, constitute the inter-governmental part of the TEU, are pure inter-governmental instruments. A contrast should be made with the pure inter-governmental procedure and the Community procedure. Under the Community process, legislation is proposed by the Commission, discussed, modified or rejected by Council and the European Parliament, adopted by the Council or Commission, and is subject to judicial review by the European Court of Justice. There is input from national parlia-

⁶² See A.G. Toth, *A Legal analysis of subsidiarity*; Josephine Steiner, *Subsidiarity under the Maastricht Treaty*; and, Nicholas Emiliou, *Subsidiarity: Panacea or Fig Leaf?* in DAVID O'KEEFFE AND PATRICK M. TWOMEY, *LEGAL ISSUES OF THE MAASTRICHT TREATY* 37, 49, 65 (1994).

⁶³ See Deirdre Curtin, *The Constitutional Structure of the Union: a Europe of bits and pieces*, 30 COMMON MKT. L. REV. 17-69 (1993).

⁶⁴ TEU, *supra* at note 1, Title V, [hereinafter CFSP].

ments in the pre-legislative procedure in the consultation phase, and from national courts, who may apply Community legislation, and refer matters to the Court of Justice. Community legislation must obey the case-law of the Court of Justice, including the Court's rulings concerning respect for fundamental rights and the general principles of law. By contrast, under the "pure" inter-governmental process, the Member States conclude an international agreement which is not proposed by the Commission, subject to approval by the European Parliament, subject to judicial review by the European Court, and depending on national law, may also not be subject to review by the national courts. If at all, the International Court of Justice may be competent, though it should be noted that not every Community Member State has agreed to the compulsory jurisdiction of the International Court.

The inter-governmental competence created by Titles V and VI of the TEU is not "pure" in the sense described above. Although competence is not transferred to the Community, and although the Community *process* as such is generally excluded, nevertheless there are a number of connecting points to the Community. Thus, in Article K4 TEU, "[t]he Commission shall be fully associated with the work in the areas referred to in this Title." Under Article K6 TEU, the Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by the Title. The European Parliament is to be consulted on the principal aspects of the activities covered by Title VI and its views must be "duly taken into consideration." The European Parliament may ask questions of the Council or make recommendations to it, and every year it is required to hold a debate on the progress made in implementation of the areas referred to in Title VI.

Furthermore, under Article K3(2)(c) TEU, the Member States may adopt conventions covering matters falling under Title VI and may attribute jurisdiction to the Court of Justice to interpret their provisions. Finally, Article K9 TEU provides that a number of the areas referred to in Title VI may become a matter of Community competence if the Council, acting unanimously, so decides.

Similar provisions and "bridges" between the Union and the Community also are to be found in Title V as regards for-

eign affairs. Finally, it should be pointed out that the Member States act under Titles V and VI as the Council of the European Union, which is also the Council for the purposes of the Community.

The point of this detailed analysis is to show that the inter-governmental method adopted by the Member States is not "pure" inter-governmentalism, but rather provides for a variety of links to the Community institutions, while allowing Member States to co-operate inter-governmentally within the context of the Union. Moreover, the inter-governmental method chosen is dynamic: as provisions such as Article K9 TEU demonstrate, there is the possible of a transfer of competence in areas of inter-governmental cooperation from the Member States to the Community.

This is not to endorse the TEU. It is a badly drafted document. It is not transparent, and requires in order to read it, a thorough knowledge of Community law to which it makes constant and confusing cross-reference. Even the very numbering is absurdly non-"user friendly," as provisions such as Article K3(2)(c) show.

The TEU encountered severe difficulties before being ratified by the Parliaments of the Member States and the European Parliament. This now seems almost inevitable. The TEU had been negotiated in secret. To be sure, there were the usual copious 'leaks' to the specialist press and to observers of Community matters. However, the document was negotiated by technocrats, for technocrats. There was no appreciation that this document, which aspired to a federal character, (even though this is not specified in the Treaty itself), and which is supposed to constitute the 'constitutional charter of a Community based on the rule of law,'⁶⁵ should be capable of being read, much less understood, by the ordinary European.

The TEU was thrust upon the public by the 'naive elite'⁶⁶ which had drafted it, with the expectation that a public which had heretofore supported European integration, would also support this latest step. This ignored the fact that firstly, the eco-

⁶⁵ 294/83, *Les Verts v. European Parliament* 1986 E.C.R. 1339; Opinion 1/91, 1991 E.C.R. I-6079.

⁶⁶ To use a remarkably apt phrase which I first heard used by Professor Roger Goebel of Fordham Law School.

conomic climate had changed since the Rome summits in 1990 which had authorised the inter-governmental conferences. Secondly, the fall of the Soviet bloc may also have changed the way in which Europeans view the Community. Its political vocation no longer appears so necessary to some. Thirdly, it ignored the fact that the Community was increasingly seen to be remote, undemocratic, and bent on centralisation at the expense of the Member States and the regions.

The rejection of the TEU by the Danish people on June 2, 1992, by a vote of 50.7 per cent to 49.3 per cent, was the first occasion that an agreement between the Member States to amend the fundamental Community treaties failed to be ratified at national level. More than anything else, it highlighted the fact that the further integration aspired to by the TEU, however masked by its abstruse drafting, went far beyond what was acceptable at national level. Following the Danish referendum, the Irish people voted in a referendum on June 18, 1992 in favour of the TEU by 69 per cent to 31 per cent. On September 20, 1992, the French people endorsed the Treaty in a referendum by 51.05 per cent to 48.95 per cent.

As it became apparent that the Danish distrust of the TEU provisions was shared by voters in other Member States, the Member States reacted in three ways. First, the principle of subsidiarity became of central importance in attracting public support for the TEU. Thus, although the principle of subsidiarity had received rather scant attention in Article 3b EC, it became a key principle of Community law.⁶⁷ At the Lisbon summit on June 26-27, 1992, it was agreed that the Council and the Commission would observe the principle of subsidiarity in proposing, drafting and adopting legislation and that there should be a re-examination of pending proposed legislation to monitor it for compatibility with the principle of subsidiarity. At the Edinburgh summit on December 11-12, 1992, the European Council agreed an overall approach to the application of the subsidiarity principle, and laid down guidelines, procedures and practices. The European Council also invited the Council to seek an inter-institutional agreement between the European Parliament, the Council and the Commission on the effective

⁶⁷ Nugent, *Editorial: The Treaty on European Union - Looking Rather Different Twelve Months On*, 31 JCMS ANNUAL REV. 1, 3 (1993).

application of Article 3b. The Commission presented an initial review of existing or proposed legislation which should be withdrawn or amended in the light of the subsidiarity principle, and the full review was presented to the European Council in December 1993. At the Copenhagen summit in June 1993, the European Council noted that the Commission now submits proposals only when it considers that they fulfil the subsidiarity criteria. It 'welcomed' the substantial reduction in volume of Community legislation foreseen in the Commission's legislative programme for 1993 compared to earlier years.⁶⁸

Secondly, the Edinburgh European Council adopted measures to increase transparency and openness in the decision-making process of the Community. These measures, like the application of the subsidiarity principle, were intended to counter the democratic deficit, by bringing the Community nearer to its citizens.

Thirdly, the Edinburgh European Council adopted specific measures to accommodate the Danish objections to the TEU. The so-called Danish "opt-outs" from certain provisions of the TEU concern Union citizenship, participation in the third stage of EMU, defence policy, justice and home affairs (and freedom to conduct a stricter national policy in the areas of social policy, consumer policy, the environment and distribution of income). The European Council purported to resolve the question by a 'Decision of the Heads of State and Government, meeting within the European Council, concerning certain problems raised by Denmark on the Treaty on European Union,' that is to say, not a decision of the European Council, but rather an international agreement 'in simplified form.'⁶⁹ Given its legal nature and the fact that it is not ratified by the national parliaments, it does not in fact modify the TEU, nor does it take precedence over it. Moreover, the Decision's content does not factually modify the TEU but merely explains in some detail or clarifies Denmark's obligations under the TEU. The impression was given to the Danish electorate that a special position had been won for Denmark, and it was presumably on this basis that the

⁶⁸ Bull. EC 6-1993 point I.22, 16.

⁶⁹ Curtin and van Ooik, *Denmark and the Edinburgh summit: Maastricht without tears* in *THE LEGAL ISSUES OF THE MAASTRICHT TREATY* (David O'Keeffe and Patrick M. Twomey eds., 1994).

Danish people subsequently approved ratification of the TEU. However, a particularly authoritative source maintains that 'Denmark's "special position" to a large extent appears to be a legal mirage.'⁷⁰

The success of these measures may be judged by the results. Ratification proceeded in the other Member States, and on May 18, 1993, by a majority of 56.8 per cent, the Danish people voted in a second referendum in favour of the TEU. In the United Kingdom, the European Communities (Amendment) Act 1993 was enacted and entered into force following a vote on the Protocol on Social Policy.⁷¹ The Act was immediately the subject of an unsuccessful application for judicial review.⁷² The United Kingdom deposited the instrument of ratification in Rome on Monday, August 2, 1993. The last State to ratify was Germany, which had awaited the outcome of a unsuccessful challenge to the TEU in a case before the *Bundesverfassungsgericht* (Federal Constitutional Court) on the compatibility of the TEU with the German Basic Law.⁷³ In accordance with Article R thereof, the TEU entered into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step, that is, November 1, 1993.

However, a number of other events have occurred which have diminished enthusiasm, at least temporarily, for the European ideal. This is surprising if one considers that the year 1992 should have been one of the Community's highest points. The revitalisation of the Community, which began with the Single European Act, seemed to have reached its apogee with the signature of the TEU on February 7, 1992 and the conclusion of the EEA Agreement on May 2, 1992. Almost immediately however, a whole series of issues combined to dissipate as though it had never existed the optimism engendered at Maastricht and Oporto when the TEU and the EEA Agreement were signed.

⁷⁰ *Id.*

⁷¹ AGENCE EUROPE, No 6028 July 24, 1993, 3.

⁷² *Regina v. Secretary of State for Foreign and Commonwealth Affairs*, Ex parte Rees-Mogg, 1993 W.L.R. (Q.B. Div'l Ct.).

⁷³ M. Herdegen, *Maastricht and the German Constitutional Court: Constitutional Restraints for an "ever closer union," Documents "Extracts from: Brunner v. The European Union* (BUNDESVERFASSUNGSGERICHT), 31 COMMON MKT. L. REV. 235-262 (1994).

i) The first such difficulty was economic. The world-wide economic crisis affected the Community, with the result that it was impossible to sustain the patterns of growth and convergence which had underpinned moves towards closer European integration. Massive unemployment combined with the threat of social dumping to make the social protection systems of the twelve Member States vulnerable. The economic crisis undercut the Community's economic base, which is the source of its dynamism or lack of dynamism as the case may be.

ii) The second difficulty contributing to the decline of the Community derived from the near-collapse of the Exchange Rate Mechanism (ERM) of the European Monetary System (EMS). The ERM has been subject to unparalleled speculative pressures which damaged it severely, and have cast doubt on the development of EMU. The ERM had enjoyed stability since 1987, the occasion of the last realignment. On September 13, 1992, the Italian lire was devalued; on September 16, 1992, sterling and the lire suspended their membership of the ERM, and the peseta was devalued. On November 23, 1992, the peseta and the escudo were devalued, and the Irish punt was devalued in January and May 1993. On July 31, 1993, an emergency Council of Finance Ministers recognised the virtual breakdown of the system, and agreed to such wide fluctuation bands (15 per cent) for most of the currencies remaining within the EMS that the bands appeared to lose any real disciplinary force. A consequence of this was the call from some observers for an accelerated admission to EMU by some countries in order to avoid currency instability of such magnitude (Germany, France and the Benelux countries were most frequently mentioned) although others pointed to the fact that the conditions for convergence necessary for the introduction of a single currency do not exist. Moreover, the convergence criteria posed by the TEU⁷⁴ seemed, in the light of the instability in the ERM, to be inappropriate, would impose too high a price on some Member States, and the timetable for convergence appeared unrealistic.

It appears doubtful at the time of writing (September 1994) that the timetable for EMU can be met. Although the second

⁷⁴ TEU, *supra* note 1, art. 109j.

stage, scheduled to begin on January 1, 1994, did meet the Treaty deadline, it appears unlikely that the same will be true of the third stage, which calls for the creation of the European Central Bank, irrevocable fixing of conversion rates between the currencies of the Member States and the rapid introduction of the ECU as the single currency of the Member States.⁷⁵

iii) The third structural difficulty of the Community arose from its inability to develop a coherent foreign policy, particularly with regard to ex-Yugoslavia. Possibly more than anything else, this highlighted the weaknesses of European integration, demonstrating that the Community and the Member States acting together first in European Political Cooperation and then under the terms of Title V of the TEU are unable to react to a problem within Europe of this dimension. Individual Europeans feel shame and anger at the failure of the Twelve to prevent the genocide taking place in Bosnia.⁷⁶ Moreover, the apparent indecision and powerlessness of the Twelve cast doubts upon their ability to adhere to the provisions on the Common Foreign and Security Policy (CFSP) in Title V, TEU.⁷⁷ It was clear during the inter-governmental conferences that the CFSP would pose enormous problems: this was already evident in the light of the Kuwait-Iraq Gulf War. As the TEU was not yet in force, the Twelve initially reacted to the ex-Yugoslav conflict in the context of European Political Cooperation. The underlying difficulties in achieving a common foreign policy, common security policy and common defence policy have not been resolved by the entry into force of the TEU. Rather, recent experience would seem to show that the provisions will be useless without a common will for joint action. Thus, although the Twelve issued numerous 'fairly consistent' declarations⁷⁸ on the conflict in ex-Yugoslavia, they were unable to agree on a policy for joint action. In addition, problems arose concerning uniform enforcement of sanctions by at least one Member State, and in the organisation of the naval blockade in the Adriatic.

⁷⁵ TEU, *supra* note 1, art. 1091(4).

⁷⁶ L. Neville Brown, *Disunity in the Union: a personal view from Britain*, *Guest Editorial*, 30 COMMON MKT. L. REV. 1089, 1091 (1993).

⁷⁷ TEU, *supra* note 1, Title V.

⁷⁸ Nugent, *supra* note 67, at 5.

More recently, the Union has taken no concrete position as regards Rwanda. The conclusions of the European Council meeting in Corfu on June 24-25, 1994 merely promised humanitarian aid.⁷⁹ It will be recalled that France, acting on its own, did send troops to Rwanda.

iv) As regards the common commercial policy, a matter which has always been part of Community competence, the Community also showed that it was often unable to act with one voice, with potentially damaging results for world trade. The Community for a time appeared unable to achieve unanimity in the context of the Uruguay Round of the GATT negotiations.

It is submitted that the result of the factors outlined above, together with more technical internal matters such as the difficulties with the reform of the Common Agricultural Policy and the fight over the allocation of financial resources needed to enable the Community to meet future challenges and 'to match its ambitions' (the so-called Delors II package) weakened the Community internally as well as externally. In a remarkably frank remark, President Delors acknowledged that 'routine cooperation between our 12 countries has weakened in the face of these developments.'⁸⁰ This is an admission, evident to all observers, that the period pending ratification of the Maastricht Treaty has shown an extraordinary loss of political momentum. This resulted not only from the loss of dynamism and institutional self-confidence as a result of the ratification difficulties, but also from a lack of economic and social credibility, all of which has been freely admitted by the Commission.

IV. ENLARGEMENT: THE ACCESSION OF NEW MEMBERS TO THE UNION

One of the greatest challenges facing the Union is that of enlargement through the accession of new members. Paradoxically, in view of the difficulties undergone by the Community, described above, it continues to be a pole of attraction for other European States, although evidently the internal troubles referred to above have had their effect in causing unease particularly among the applicant States.⁸¹

⁷⁹ AGENCE EUROPE, No. 6260, July 26, 1994, 11.

⁸⁰ *Supra* note 21, at 7.

⁸¹ Nugent, *supra* note 67, at 6-7.

Five EFTA States made applications for accession: Austria,⁸² Sweden,⁸³ Finland,⁸⁴ Switzerland⁸⁵ and Norway.⁸⁶ Applications were also made by Turkey, Cyprus,⁸⁷ and Malta.⁸⁸ In 1994, applications were made by Hungary and Poland, and their applications are currently being reviewed by the European Commission.

The Union has taken important decisions in this respect by concluding accession negotiations with four EFTA States, Sweden, Norway, Austria and Finland. As a result, the Community is committed to growing to 16 by January 1, 1995, provided that the ratification process proceeds without difficulty in the applicant countries.⁸⁹ The Commission has also given positive opinions on the accession of Cyprus and Malta to the Union. It has also agreed that associated countries in Central and Eastern Europe may accede to the European Union as soon as an associated country is able to assume the obligations of membership. Thus, the number of Member States could increase to 22 with the accession of the associated countries in Central and Eastern Europe,⁹⁰ to 25 with the accession of the Baltic States, to 27 with the accession of Malta and Cyprus, and to 28 with the accession of Albania. Moreover, certain States of the ex-Yugoslavia may wish to join the Union: the case of Slovenia is just one example.

At the Lisbon summit on June 26-27, 1992, the European Council took the view that the EEA Agreement paved the way for opening enlargement negotiations with a view to an early

⁸² Bull. EC 7/8-1989 point 2.2.14.

⁸³ Bull. EC 7/8-1991 point 1.3.3.

⁸⁴ Bull. EC 3-1992 point 1.3.1.

⁸⁵ As Switzerland rejected ratification of the EEA, its application to accede to the Union has been effectively suspended.

⁸⁶ Bull. EC 11-1992 point 1.4.3.

⁸⁷ Bull. EC 7/8-1990 point 1.4.24.

⁸⁸ Bull. EC 7/8-1990 point 1.4.25.

⁸⁹ At the time of writing, Austria had already decided to join the Union. Before the end of 1994, Finland, Sweden and Norway should hold referenda, in that order, with the supposedly more enthusiastic populations voting first, and the least enthusiastic, Norway, which had already rejected accession to the Community in 1973, voting last. In this way it was hoped that the Norwegians, faced by three positive votes of the other applicant countries, would feel isolated in Europe if they too did not decide to join the Union.

⁹⁰ The associated countries in Central and Eastern Europe include: Poland, Hungary, Czech Republic, Slovak Republic, Bulgaria, Romania.

conclusion with EFTA countries seeking membership of the Union,⁹¹ and it invited the institutions to 'speed up' the preparatory work needed to ensure rapid progress.⁹² In line with the view taken at the European Council which finalised the TEU at Maastricht, the European Council decided that the official negotiations should not be opened until after ratification of the Treaty on European Union, but then immediately. It also considered that agreement must first be reached on the Delors II financial package. The general negotiation framework was presented to the Council of Ministers on December 7, 1992. It was decided by the Edinburgh summit that 'given the agreement reached on future financing and the prospects for early ratification' of the TEU,⁹³ enlargement negotiations should start with Austria, Sweden and Finland at the beginning of 1993, and with Norway once the Commission's opinion on its application was available. It was also decided that the conditions of admission of the new Member States would be based on the acceptance *in full* of the TEU and the *acquis communautaire*, subject to possible transitional measures.

This insistence that new Member States should accept the TEU and the *acquis communautaire* in full was also emphasised by President Delors. As he put it: 'new members will have to accept the *acquis communautaire* in its entirety the whole Union Treaty and nothing but the Union Treaty.'⁹⁴ This may seem contradictory in the light of the opt-outs for the United Kingdom and Denmark contained in the TEU. However, President Delors characterised these opt-outs as "a long-service bonus" which would not be available to new members. Until now, this stance has been accepted by applicants for membership, but once they have been admitted to the Union, they will have the same rights as other Member States. In the light of the increased variable geometry in the Community, discussed

⁹¹ See *Conclusions of the Presidency*, AGENCE EUROPE No. 5760, 28 June 1992, 5. See also, *Europe and the Challenge of Enlargement*, AGENCE EUROPE, No. 1790, 3 July 1992. See also, *The Benelux Memorandum on Enlargement*, AGENCE EUROPE, No. 1789, 27 June 1992.

⁹² The decision concerning the EFTA countries contrasts strongly with that concerning Turkey.

⁹³ Bull. EC 12-1992 point 8.

⁹⁴ *Supra* note 21, at 9.

below, the new Member States may well take the view that they wish to be part of variable speed arrangements.

The talks with Austria, Sweden and Finland began on February 1, 1993. The Commission issued a positive opinion on Norway's application on March 24, 1993, and the first meeting with Norway took place on April 5, 1993. There were initial difficulties in launching the negotiations but these were overcome and the process was accelerated. The Copenhagen European Council of June 21-22, 1993 ambitiously set the date of January 1, 1995 as the date for the first enlargement of the European Union through the accession of these four countries. The Edinburgh European Council in December 1992 invited the Commission, in preparing its opinion on the Swiss application, to take into account the views of the Swiss authorities following the referendum on the EEA Agreement.

Since five EFTA countries have already applied to join the Community, the EEA Agreement may have to be renegotiated or even wound up if four of the EFTA countries accede. It could have been thought that the EEA could continue to be used as a waiting room for candidates for accession, such as Malta, Cyprus and possibly Turkey as well as the associated East European countries with which 'Europe' Agreements have been concluded, and possibly eventually, other European countries. However, it is noteworthy that following the important Commission paper on enlargement presented at the Lisbon summit, and subsequent European Council decision, although the Commission discussed different forms of possible partnership this possibility was not one of them.

Nevertheless, the EEA might be used as a model. One of the formulas suggested by the Commission in its enlargement paper was the possibility of associating other European countries as 'partner-members' in specific Community policies, with the possibility to participate but not to vote in certain Community meetings on subjects of trans-European interest, and a variant on this was adopted by the Copenhagen European Council, as is discussed below, specifically using the EEA trans-European programmes as a model. The EEA experience may give an indication as to how this form of cooperation, based on exclusion from Community decision-making but association with its policies, may work. The analogy may not be perfect: the

EEA Contracting Parties are rather homogeneous. The EEA may also serve as a model as to how Community law, suitably transformed in national law, may be applied in States which wish to apply for membership or participate in the benefits of the Single Market.

On June 30, 1993, the Commission adopted positive opinions on the applications of Cyprus⁹⁵ and Malta.⁹⁶ As regards Cyprus, the Commission believed that its accession was subject to the resolution of the conflict in Cyprus, but this condition has since been lifted. As regards Malta, the Commission indicated that Maltese neutrality would require a constitutional amendment to allow it to fulfil its responsibilities under the TEU. The Commission also suggested beginning a dialogue with Malta in order to prepare it for accession to the Community, by making economic reforms, technical assistance, financial cooperation and other aid. For both countries, the Commission stated that the 1996 inter-governmental conference should study the institutional consequences of the accession of these small countries to the Community.

At the Corfu summit on June 24-25, 1994, the European Council decided that Cyprus and Malta should join the Union in the next phase of enlargement, that is, after the 1995 accessions.

V. CENTRAL AND EASTERN EUROPE AND THE EUROPE AGREEMENTS

At the Copenhagen summit in June 1993, the European Council decided that the countries in Central and Eastern Europe with which the Community has or plans to conclude Europe Agreements (hereinafter associated countries) should become members of the European Union. This is a major step, as previously it had been unclear whether these countries would qualify for membership. The decision also reflects how quickly the Community is reacting to the changing events in the countries of Central and Eastern Europe. Indeed, although the tragedy of ex-Yugoslavia overshadows the Community's performance, its handling of relations with the other countries in

⁹⁵ COM(93)313; Bull. EC 6-1993 point 1.3.6.

⁹⁶ COM(93)312; Bull. EC 6-1993 point 1.3.7.

the area is quite impressive, although many observers in these countries resent the 'take-it-or-leave-it' approach dictated by the Community. The Copenhagen European Council decided that accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required. The Council set important conditions for membership by these countries: membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership is deemed to presuppose the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.⁹⁷ Thus here too, the Twelve insist on an acceptance of the *acquis communautaire* and the TEU in its totality.

The European Council in Copenhagen also took important decisions concerning future cooperation with the associated countries geared to the objective of membership. A multilateral framework for a strengthened high-level dialogue and consultation on matters of common interest, arising in the Union's area's of competence has been set up in parallel with the bilateral structure of the Europe Agreements. Specific areas mentioned include the three pillars of the Union Treaty: Community areas with a trans-Europe dimension (energy, environment etc.), CFSP and Justice and Home affairs. The CFSP arrangements are particularly detailed and call for close cooperation and consultation, including before important meetings in the UN General Assembly and the CSCE. Other measures adopted include improved access for the associated countries to the Community market (more favourable quotas, duties and revised rules of origin), more effective development assistance (PHARE programme, loans), increased participation in the Community programmes which are already open for participation by EFTA countries, and measures leading to the approximation of laws. Under this heading, the associated countries had already undertaken to implement within three years from the entry into

⁹⁷ Bull. EC 6-1993, point I.13.

force of the Europe Agreements rules parallel to those in the EEC Treaty concerning competition and State aids, and the European Council emphasised as regards the new arrangements, the importance of approximation of laws in the associated countries to those applicable in the Community with regard to protection of workers, the environment and consumers.⁹⁸

Former Czechoslovakia. The Community originally concluded a Europe Agreement with the former Czech and Slovak Federal Republic. On June 23, 1993, the Commission and the Czech Republic and the Slovak Republic initialled draft Europe Agreements whereby the latter two States assumed the obligations of the former Federal Republic under the original Europe Agreement.⁹⁹

Romania and Bulgaria. Further Europe Agreements and accompanying Interim Agreements were concluded as mixed agreements by the Community and its Member States. A Europe Agreement with Romania was adopted by the Council on December 21, 1992,¹⁰⁰ and a Europe Agreement with Bulgaria, together with an Interim Agreement, was initialled on December 22, 1992.¹⁰¹

The Baltic States and Albania. On May 11, 1992, the Community concluded 10-year agreements with Estonia, Latvia and Lithuania on trade and commercial and economic cooperation.¹⁰² In order to strengthen the trade and commercial links between the three Baltic States and the Community, the Copenhagen European Council in June 1993 invited the Commission to submit proposals for developing the existing trade agreements with the Baltic States into free-trade agreements. The Council stated that 'it remains the objective of the Community to conclude Europe Agreements with the Baltic States as soon

⁹⁸ The European Council also urged that officials from the associated countries should receive training in Community law and procedure (with the technical assistance of the Community) to prepare for accession, and that a task force of representatives of the Member States and the Commission will be set up to coordinate the work of approximation of legislation.

⁹⁹ Bull. EC. 6-1993 point 1.3.17-18.

¹⁰⁰ Bull. EC 12-1992 point 1.4.14.

¹⁰¹ Bull. EC 12-1992 point 1.4.11-12, initialled on December 22, 1992.

¹⁰² Council Decisions of December 21, 1992 on the conclusion of the Agreements, 1992 OJ (L 403) 1 (Estonia), 10 (Latvia), 19 (Lithuania). Council Decision of October 26, 1992 on the Agreement with Albania, Bull. EC 10-1992 point 1.4.11.

as the necessary conditions have been met.¹⁰³ No similar declaration of intent was made as regards Albania.

The relations with the Baltic States neatly demonstrate the way in which the Community develops links with other States which are potential applicants for membership. Trade, cooperation and other agreements tend to be the first step, followed by free trade agreements, followed by Europe association Agreements. The Europe Agreements aim principally at contributing to the development of the associated countries with a view to their possible accession. Although integration is thus their long-term aim, the more immediate aim is to assist in bringing about the conditions of the market economy and greater convergence between the associated countries and the Member States.

VI. BROADENING AND DEEPENING THE COMMUNITY

The Commission's reference to the institutional consequences of accession in its opinions on the applications of Cyprus and Malta for accession underlines the fact that the enlargement of the Community will have important institutional consequences.¹⁰⁴ However, although the Community has decided on large-scale enlargement, it has not yet come to terms with the institutional consequences thereof. The debate on 'broadening and deepening' the Community turns on two issues: expanding the membership of the Community and increasing the Community's competences. At the time of the inter-governmental conferences leading up to the TEU, it was decided to concentrate only on the issue of Community competences, leaving aside the question of how the Community should expand in the coming years and how its institutions and policies will have to change as a result.

It is clear that the institutional consequences of enlargement are vital. At the moment, each Member State is represented in the Council, and has 'its' members in the Commission, the Court of Justice, the Court of First Instance and the Court

¹⁰³ Bull. EC 6-1993 point I.14.

¹⁰⁴ Ungerer, *Institutional consequences of broadening and deepening the Community: the consequences for the decision-making process*, 30 COMMON MKT. L. REV. 71 (1992).

of Auditors.¹⁰⁵ Moreover, the composition of Parliament is not related strictly to population but gives a greater weight to small countries which would otherwise have small delegations. The weighted voting arrangements in the Council follow this principle in ensuring that the small countries are not systematically overridden by the large countries. All of these arrangements would have to be revised in the context of a Union of 20 members, not to speak of a potential 28 or more. Otherwise all the institutions of the Community (including the Parliament) would risk becoming unwieldy if current patterns of representation were continued. Moreover, the increase in numbers could distort current working practices. A favourite example of this concerns the troika of Council ministers. The troika is composed of the current, previous and future presidents in office of the Council, and acts on behalf of the Community in European Political Cooperation. A troika composed (as it could be under current rules) of Latvia, Lithuania and Luxembourg is apparently considered by the Commission not to be sufficiently representative or weighty. Inevitably it is suspected that the Commission (or the larger Member States) will propose institutional changes to the detriment of the smaller Member States.¹⁰⁶ Clearly, this would raise questions as to the democratic deficit, and to the equal participation of all States in the Union's decision-making and judicial processes.

The difficulties which will be caused by enlarging the Community/Union were brought into stark relief in 1994, after the negotiations for accession to the Union of Austria, Finland, Norway and Sweden had been concluded. The United Kingdom and Spain challenged the decision¹⁰⁷ according to which negotiations for enlargement could not be used as an occasion to change the Treaty rules on qualified majority voting in the Council, with the exception of the purely arithmetical adjust-

¹⁰⁵ There is no nationality requirement for members of the three Courts, although in fact only nationals of the Member States are nominated by their Governments, whereas there is such a nationality requirement for members of the Commission. Members of the Institutions are required to be independent of the Member States.

¹⁰⁶ A document purporting to be such a plan was "leaked" in Denmark prior to the first referendum on the TEU.

¹⁰⁷ Adopted unanimously at the European Council meeting in Lisbon in 1992 and confirmed by it at Copenhagen in 1993.

ment of the votes required to adopt a decision for which a qualified majority vote is necessary. In 1994, before accession of the new Member States, in cases where the Council may adopt legislation by a qualified majority vote, such an act requires 54 votes out of a total of 76 weighted votes (each large country having 10 votes and the smaller countries lesser numbers).¹⁰⁸ This means that 23 votes are needed for a "blocking minority." If all four aspirant countries join the Union in 1995, they will receive a total of 14 weighted votes and by arithmetical extrapolation, the qualified majority will go up to 64, and the blocking minority to 27.

As a result, if this formula is used, it will become slightly more difficult in the future to block legislation. The United Kingdom and Spain regarded this as unacceptable and demanded that the blocking threshold should remain at 23 votes, and that the influx of a number of small countries should not lead to an effective weakening of the large countries' blocking power.

As a result, a compromise was reached, very reminiscent of the Luxembourg Compromise mentioned above, and using much the same language.¹⁰⁹ According to this new agreement, called the Ioannina Compromise, the twelve Member States agreed that in the event that four new Member States should join the Union, the threshold for qualified majority voting should be set at 64. They also agreed that the matter should be considered at the IGC in 1996. However, they further agreed that if Member States representing a total of 23 to 26 votes indicate their intention to oppose the taking of a Council decision by qualified majority, the Council will make every effort to find a satisfactory solution that can be adopted by at least 68 votes, within a reasonable period and without prejudicing the compulsory limits fixed by the Treaties and secondary law.

The result of the Ioannina Compromise is unclear. It is probably not a legal document, but merely a political statement. There is a notable difference with the Luxembourg Compromise: in the Ioannina Compromise, a time limit of "a reasonable period" is set to find a solution. No one knows what this might

¹⁰⁸ EEC Treaty, *supra* note 7, art. 148.

¹⁰⁹ AGENCE EUROPE, No. 6201, March 30, 1994.

be. Under Article 7 of the Council's Rules of Procedure,¹¹⁰ any Member State may call for a vote in Council, and if supported by the majority, this request must be complied with.

The Ioannina Compromise is an uncomfortable reminder of the early history of the Community. It could have a profoundly negative effect on the Union's activity if used in practice. Even the very threat to invoke it may block legislation being proposed or moved forward. It is therefore clear that the Compromise should not be allowed to last. The Union cannot have a decision-making procedure which effectively is undermined by the Ioannina Compromise, undoing the valuable progress made through the large-scale introduction of qualified majority voting in the Council by the SEA.

The TEU and subsequent events have also raised the issue of the "two-speed Europe," a "multi-speed Europe" and "variable geometry". This jargon reflects the fact that there is a growing concern as to whether it is feasible to expect all Member States, particularly new Member States, but also those with reservations about the political aims of the Union, to proceed towards European integration at the same speed. Thus, it is conceived that it may be possible for there to be a "hard core" of Member States in the "fast lane," with another group either permanently in the "slow" lane or, more likely, able to switch from one lane to another depending on the subject matter. Thus, the United Kingdom could be in the slow lane on social matters but it could be in the fast lane as regards EMU. This latter version is known as *Europe à la carte*.

The so-called Danish opt-outs to the TEU, whatever their legal value, reflect a growing tendency towards a fragmentation on the part of the Member States, where the Twelve apparently recognise that not every Member State may be able to accept every policy. The two-speed Europe has effectively been replaced by the Europe of a variable geometry or a *Europe à la carte*. Thus, the United Kingdom obtained its own opt-outs in the TEU as regards social policy, and potentially, as regards EMU.¹¹¹ The TEU itself provides for the possibility of the third stage of EMU starting with a mere majority of Member

¹¹⁰ Council Decision 93/662/EC of December 6, 1993 OJ, (L304) 1.

¹¹¹ Protocol 11 on certain provisions relating to the United Kingdom of Great Britain and Ireland (EMU); Protocol 14 on social policy.

States¹¹² and it cannot be excluded that the constitutional conference to be called in 1996 to revise the Treaty will decree that EMU may begin with an even smaller number of participating States. Moreover, the Commission has given its blessing to the inter-governmental initiative on the Schengen Convention on the abolition of internal border controls which also has the participation of only a majority of Member States. Inevitably, therefore, the impression is given that this sort of fragmentation is increasing and that previous expectations of uniform progress towards European integration may need to be revised.

The summer of 1994 was enlivened by a debate in European circles on a variable geometry or two-speed Europe, as a result of a paper produced by the CDU, one of the governing parties in the German Government. This proposal foresaw European integration going forward with only a small "hard-core" group of nations, essentially Germany, France and the Benelux countries. The proposal was hotly contested by the Italian and United Kingdom Governments, caused dismay in Sweden and Finland, two aspirant members, and was disavowed by the German and French Governments.¹¹³ However, the issue is one that is going to confront the Union in the future, particularly at the 1996 IGC.

I think that various forms of a two-speed or multi-speed Europe, or variable geometry or Europe *à la carte* are inevitable in view of the process of broadening and deepening the Community. We cannot realistically expect the same level of, for example, environmental standards in Central and Eastern European countries as in the original twelve Member States, at least not immediately. Likewise, some countries may not be able to proceed with EMU for some time, as the economic convergence criteria which determine a Member State's ability to adhere to EMU, are severe.

It seems only a matter of common sense therefore that some form of variable geometry should be acceptable. There should however be an obligation of result: all Member States should be required to achieve the Community aims, but given different deadlines to do so. They should not be allowed to opt out of a Community aim permanently as has occurred in the

¹¹² TEU *supra* note 1, art 109j(3).

¹¹³ INTERNATIONAL HERALD TRIBUNE, September 8, 1994 at 2.

case of the United Kingdom with the social policy opt-out contained in the TEU. Moreover, it is imperative that certain matters are not negotiable. Thus, the fundamental principles of the Community such as democracy and respect for the rule of law must not be the subject of variable geometry agreements. All countries must respect the European Court's case-law on human rights. Basic principles of the Community legal order such as equal treatment for men and women, and non-discrimination on the grounds of nationality must apply to all Member States immediately. However, even this is difficult, considering the state of the economy of some aspirant Member States. Nevertheless, this is an area in which the Member States should not compromise. If necessary, the European Parliament, which has emerged as the champion of individual liberties and respect for fundamental rights should refuse to approve the accession of a new State, using its powers under Article O TEU, unless it is clear that such guarantees are present.

VII. THE INTERNAL MARKET

According to Article 7a of the EC Treaty, the internal market was to be established by December 31, 1992. In fact, although steady progress was made towards this end, the internal market was not entirely completed by the deadline. In its Seventh Report on the Implementation of the White Paper of 1985,¹¹⁴ the Commission took stock of the significant progress that was made during the final year of the internal market programme and which concerned notably, the mutual recognition of diplomas, certain technical harmonization measures, and the liberalisation of transport. In the field of insurance services, the third life assurance directive was adopted, marking the completion of the internal market in the insurance field.¹¹⁵ The directive coordinates the principal rules governing prudential and financial supervision, provides for the mutual recognition of authorizations granted to insurance undertakings and of the systems of prudential supervision in the different Member States, the granting of a single authorization valid throughout

¹¹⁴ COM(92)383 final.

¹¹⁵ Council Directive 92/96 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third life assurance Directive), 1992 O.J. (L 360).

the Community and the supervision of all of an undertaking's activities by the Member State of origin.

There were also measures concerning works of art, including a Regulation on the export of cultural goods¹¹⁶ and a Directive on the return of cultural objects unlawfully removed from the territory of a Member State.¹¹⁷ The financial services package was achieved through the adoption of the investment services directive (based on the single investment licence known as the 'European passport')¹¹⁸ and the capital adequacy directive. Progress was also made in tax harmonisation, notably the fixing of the minimum 15 per cent VAT rate until end 1996 (zero-rating and super-reduced rates are authorised on a transitional basis), and the setting of minimum rates of excise duties on alcohol and other alcoholic beverages, tobacco and mineral oils.¹¹⁹ The Council also adopted three directives on public procurement, on tendering procedures for supplies and public works and on opening up public procurement in the heretofore excluded services sector (water, energy, transport and telecommunications).¹²⁰ There was little progress in the intellectual property field.¹²¹

In 1992, the Commission had proposed all the necessary Single Market directives. The focus then turned on the Community legislator for the adoption of the necessary Community legislation, and on the national parliaments and Member State Governments for their transposition into national law. By the end of 1992, 95 per cent of the 282 White Paper proposals had been adopted, but less than half of these were transposed into

¹¹⁶ Bull. EC 11-1992 point 1.3.21.

¹¹⁷ Council Directive 93/7 on the return of cultural objects unlawfully removed from the territory of another Member State 1993 O.J. (L 74).

¹¹⁸ Bull. EC 12-1992 point 1.3.45.

¹¹⁹ Council Directive 92/77 1992 O.J. (L 316).

¹²⁰ Bull. EC 6-1993 point 1.2.35-38.

¹²¹ Council Directive 92/100 on rental right and lending right and on certain rights related to copyright in the field of intellectual property 1992 O.J. (L 346); proposal for a Council Directive harmonizing the term of protection of copyright and certain related rights, Bull. EC 1/2-1993 point 1.2.34; proposal for a Council Directive on the legal protection of databases, Bull. EC 11-1992 point 1.3.40; proposal for a Council regulation on the Community trade mark, Bull. EC 11-1992 point 1.3.41; proposal for a Council directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission, Bull. EC 5-1993 point 1.2.21.

the national law of all the Member States. Moreover, 18 White Paper proposals were still pending before the Council.

Decisions have still not been taken in areas of fundamental importance. The issue of the abolition of internal border controls has not been resolved. The Commission decided that it would not bring actions against Member States for their failure to abolish border controls on persons after January 1, 1993, although it recognised that it is "the thorniest problem" in the achievement of the Single Market.¹²² However, it is understandable that the Member States did not feel able to proceed with the abolition of border controls as two conventions vital for the establishment of the internal market in persons have not been ratified or entered into force. The External Frontiers Convention, a prerequisite for the internal market through the establishment of a strong external frontier remains deadlocked because of a dispute between the United Kingdom and Spain over the status of Gibraltar, and an alternative draft Council Decision proposing such a Convention is still under consideration.¹²³ There have also been delays in ratifying the Dublin Convention determining the State responsible for examining asylum applications, another part of the structure required for a common European immigration policy.

The legal significance of Article 7a is actually unclear. In its Seventh Report, the Commission reaffirmed the interpretation it had given to the provision in its communication of May 8, 1992.¹²⁴ The Commission maintains that Article 7a establishes a clear and precise obligation that allows no margin of discretion. This language indicates that the Commission believes that the provision may have direct effect which could be invoked by an individual before a national court. However, authoritative academic commentators differ over the significance of the date of December 31, 1992, and as to whether it imposes enforceable obligations on Member States and rights on individuals which may be recognised by national courts and the European Court of Justice.¹²⁵ Eventually the European Court may have to decide whether the Commission's interpretation of

¹²² The Commission's work programme for 1993-94, Supp. 1/93 Bull. EC, 17.

¹²³ COM(93)684 final.

¹²⁴ COM(92)877 final.

¹²⁵ See *supra* note 26.

Article 7a is consistent with the interpretation to be given to the Declaration on Article 8a (as it then was) which was appended to the SEA, according to which 'setting the date of 31 December 1992 does not create an automatic legal effect.'

The European Parliament decided in July 1993 to bring an action for failure to act against the Commission under Article 175 of the EC Treaty, on the grounds that the Member States had violated the Treaty by maintaining border controls and that the Commission should have brought an action before the European Court of Justice under Article 169 of the EC Treaty to have the infringement established.¹²⁶ Whether this action will succeed will depend not only on the interpretation to be given to the setting of the date of December 31, 1993. The Court will also have to decide whether the Parliament is entitled to bring such an action. The question which arises is whether such an action, which is essentially an action to monitor the Commission's use of its discretion to bring enforcement actions under Article 169, is available under Article 175. It could be argued that under the system of the Treaty for enforcement actions, Articles 169 and 170 reserve to the Commission and the Member States the power to bring the matter of a breach of the Treaty before the European Court of Justice. The other Institutions are not mentioned in Article 170. One authoritative commentary on Community law states that in practice the Commission enjoys full powers of discretion as to whether to initiate an action for judicial review of Member States' acts, but does not advert to this particular sort of situation.¹²⁷ The case-law is not especially helpful in deciding the point, as previous cases have turned on an individual's right to sue the Commission for failure to bring an action under Article 169,¹²⁸ whereas the rights of a Community institution raise very different questions within the framework set up by the Treaty. Other cases have concerned actions for failure to act which did not involve challenging the Commission's use of its discretion not to bring an Article 169 action.

¹²⁶ AGENCE EUROPE, No. 6023 July 16, 1993 at 7.

¹²⁷ SCHERMERS AND WAELEBROECK, *JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES* 309 (5th ed. 1992).

¹²⁸ See Case 247/87, *Star Fruit v. Commission*, E.C.R. 291 (1989).

It is also possible as Commissioner Vanni d'Archirafi, responsible for the internal market, maintained,¹²⁹ that the Parliament's action could lead to a limitation of the Commission's powers, a result which would be precisely the opposite of that desired by the Parliament.

In its Seventh Report, the Commission identified four other areas, apart from the suppression of border checks on persons, where there was cause for concern in the implementation of the internal market: the harmonisation of indirect taxation, the creation of a Community patent and trademark, harmonisation of company law including the creation of the European company and the harmonisation of corporate taxation including the abolition of double taxation on undertakings and allowance for losses in another Member State. A number of supplementary proposals have to be adopted dealing with observance of copyright and neighbouring rights. The Commission's legislative programme for 1993-94 contains not just technical matters but also highly complicated and tendentious issues such as in the audiovisual services (including HDTV) and financial services areas (supervision of financial groups).¹³⁰

On October 26, 1992, the Commission received the Sutherland Report on the future of the Single Market after 1992. The Report examines the issues which need to be resolved to enable the internal market to be administered fairly and effectively under the headings of communication, access to justice and administrative partnership.

Under the heading of communication, the Report recommends that much more needs to be done to inform market subjects as to what to expect and what to do if they encounter problems. The Commission should set up a strategy for improving information but it will be up to the Member States to increase awareness and understanding by consumers and economic operators of Community measures which affect their legal position.

Public confidence should be boosted by remedying shortcomings in Community decision-making. The Commission could make public, at an early stage, its intention to propose

¹²⁹ AGENCE EUROPE, No. 5987, May 26, 1993 at 12.

¹³⁰ The Commission's legislative programme for 1993-94, 1/93 Bull. EC 30-36.

legislation; there should be hearings, and a dialogue with interested parties (consumer groups, trade and professional organisations etc.). Community legislation, frequently so dense as to be understood only by technocrats, should be made more transparent. It should also be consolidated from time to time, producing a single authoritative text combining the initial text and all subsequent amendments. Where approximation has been successful, directives should be transformed in regulations to allow market operators and national administrations to refer only to one text, valid throughout the Community. The Report also notes that the pace of the 1992 legislative process resulted in the adoption of anomalies, contradictory legislation or conflicting linguistic versions, which need to be corrected as they impede the proper implementation and application in the Member States. The Commission should avoid proposing legislation on the basis of an exclusively sectoral approach which can lead to contradictions. It should have a unit to coordinate legislative proposals, and all such proposals should be based on a uniform application of five criteria: need, effectiveness, proportionality, consistency and communication. The Commission should carry out regular reviews of the real impact of Community legislation and of the principle of mutual recognition of national regulation in non-harmonised areas.

The Sutherland Report was also concerned with the effectiveness of judicial protection in the Community. There is an urgent need for more information and better advice for those who seek legal redress in connection with Community law rights. The Commission and the Member States should do more to give market subjects guidance on issues such as whether a complaint falls within the scope of Community law, whether a case should be brought before national courts or the European Court of Justice or Court of First Instance, when to submit problems to the national administrations and when and how to approach the Commission directly, and whether non-judicial mechanisms such as the ombudsmen or consumer guarantee schemes could afford adequate redress. The Report also points to the problems caused by the widely differing rules in the Member States governing access to the Courts and suggests that the Commission should make a report on these issues. The knowledge of Community law of judges and lawyers in the

Member States needs to be improved. Sometimes the national courts have only limited powers to make interim orders against alleged infringements, and the success of a *Francovich*-type claim for damages caused by a Member State's infringement of Community law depends on the workings of national rules of procedure, particularly as regards the standards of proof required. The Commission is urged to make a statement on the implications of the *Francovich* judgment, there should be remedies directives prescribing the redress available to persons affected by breaches of the law and 'mediators' should be appointed in the Member States to take up cases against the national authorities. Penalties should be 'Community-minded' and should not vary widely from one Member State to another.

As regards the issue of administrative co-operation, the partnership between the Commission and the Member States which is designed to help the Member States apply Community law and the Commission to supervise its application and to assist in problem-solving, should be emphasised and contact groups established. There should be a rapid agreement on information-sharing, pooling of expertise and the establishment of case-handling procedures. The Commission should make annual reports on the functioning of the internal market. Implementation of Community law should be followed closely and the results made public.

The Commission's initial response to the Sutherland Report was adopted on December 2, 1992¹³¹ and presented to the Edinburgh European Council.¹³² The Commission and European Council's responses were positive. The Commission welcomed the recommendation for an annual report on the Single Market, and the first such report will be published in the second half of 1993. As regards the recommendations for preparing Community legislation, the Commission noted that the subsidiarity principle would be respected in preparing legislative proposals, and that regard would be had to the Sutherland criteria of need for action and the effectiveness and proportionality of the action taken. It undertook to come up with a solution in mid-1993 to the problem of excessive fragmentation of its legislative activities. Similar action should also be taken in the

¹³¹ SEC (92) 2277 final; Bull. EC 12-1992 point 1.3.14.

¹³² Bull. EC 12-1992 point I.9, 11.

other Institutions and in the Member States to safeguard against inconsistency. As regards the publication of legislative intentions, the Commission is prepared to publish its legislative intentions in the Official Journal when 'it sets about preparing a proposal' for the Council and where there is no urgency involved. The details published would include the objectives pursued, the grounds for the initiative and the results of preliminary surveys in the light of the Sutherland five criteria. Interested parties would be invited to make observations. The Commission recalled that the Birmingham European Council of 16 October 1992 had welcomed the Commission's offer to consult more widely before proposing legislation and the use of consultation documents (green papers).¹³³

As regards transparency in the application of Community law, the Commission will make available to the Member States all the transposition measures adopted and will provide information on the administrative arrangements for implementing Community instruments. It will also publish guides to the elimination of technical barriers to trade. The Commission agreed with the Report that national systems of sanctions form an integral part of the measures transposing directives into national law. The Member States will therefore be required to include in the transposition measures notified to the Commission the national procedures for monitoring the implementation of Community instruments and for imposing sanctions in this connection.

The Commission will establish a network of contact points between Member States' administrations responsible for implementing the operational rules of the internal market, and proposals for administrative cooperation, including data-transmission networks, in the different areas of the Single Market will be made to the Council. The Commission will set up with the Member States a crisis unit to handle urgent problems that are not covered by other current early-warning mechanisms.

As regards the recommendations on access to justice and judicial cooperation, the Commission considers that this is primarily an area for the Member States. However, it is willing to look at means of providing information to market subjects about

¹³³ Bull. EC 10-1992 point I.8, 8.

means of redress at national level, and at a training programme for the legal profession and consumer bodies. The Commission will prepare a communication on the basis of the *Francovich* judgment on compensation for damage caused to individuals by breaches of Community law, in line with the Sutherland recommendation. It will consider the suggestion of the appointment of 'mediators' for redress as regards public procurement.

The Commission will make a Communication to the Council and to the Parliament after carrying out a survey of national procedural rules and the system of sanctions as part of the monitoring of the application of Community law. The Commission broadly accepts the Report's comments on consolidation of legislation and the use of regulations where possible.

The Sutherland Report has an importance going beyond the internal market. Its legislative criteria are useful also for the application of the subsidiarity principle. Likewise, the comments on access to justice and the system of sanctions are useful for the enforcement of Community law generally. The recommendations regarding transparency go some way to bringing the Community nearer its citizens and are responsive to the idea of a People's Europe. The positive response given by the Commission to the Report's penetrating analysis is welcome. It will now be up to the Commission to follow-up as it indicated in its Communication. However, though much can be done by the Commission in areas of Community competence, the success of the follow-up to the Sutherland Report will depend upon a positive response by the other Institutions, particularly the Council and the Parliament, and the Member States. What the Sutherland Report shows above all is that mere legislation is not enough to achieve the success of the internal market, but that a whole structure must be set in place so as to win the confidence of the public, of consumers and economic operators. Implementation of the Report would go a long way towards making the Single Market rules fairer, more transparent and more efficient.

VIII. GROWTH, COMPETITIVENESS AND UNEMPLOYMENT

At the special summit in Brussels on 29 October 1993, the European Council stated that 'a situation in which the Community has 17 million unemployed workers and where a major por-

tion of the population is cut off from the labour market on a long-term basis, is intolerable and every effort must be undertaken, as a matter of priority, to remedy that situation.' Calling on the Council and the Commission to make concrete proposals for the December summit, the Heads of State and Government noted that 'our economies are now so closely dependent on each other that we can only remedy the situation together.' It noted that the proposals must relate to a medium-term strategy based on the Commission's White Paper, which had been requested by the Copenhagen summit, and on the broad economic-policy guidelines of the Member States and the Community. It also highlighted the role of the fourth research programme and that of the Structural Funds and trans-European networks in that connection.

The Commission's White Paper on "Growth, competitiveness and unemployment" notes that over the past three years, unemployment in the Community has risen sharply and now stands at 17 million people or 11 per cent of the work force. This figure should be compared to the 1990 levels, which represented the lowest for a decade following five years of steady growth and still had 12 million unemployed, or 8 per cent of the work force. The White Paper states that the 'Community must set itself the ambitious but realistic target of creating at least 15 million new jobs, thereby halving the level of unemployment by the year 2000.'

The White Paper points to a number of factors which can improve competitiveness: the opportunities offered by the single market, the contribution to the development of regions benefiting from programmes financed in the name of social and economic cohesion, keeping pace with technological developments, increased cooperation in the field of research and technological development, an efficient network of transport and telecommunications infrastructures both within the Community and toward central and Eastern European countries, and a conducive world trading environment.

It suggests that there should be a gradual increase in the relative share of research and technological development up to 3 per cent of GDP. It considers that low-cost efficient trans-European networks in transport, energy, and advanced information networks are essential for competitiveness and moreover

their creation would ultimately create hundreds of thousands of jobs. Essentially, the White Paper is suggesting a massive new public works borrowing programme, costing some 20 billion Ecu per year, financed by Commission borrowing on the international capital markets, although in fact much of this sum was already envisaged in the Delors II package, leaving only some 8 billion Ecu a year to be borrowed internationally. 400 billion Ecu of direct public and private investment could be "mobilised" by 1999.

The Commission White Paper also emphasised the 'employment environment,' referring to the importance of educational priorities and of adapting and improving vocational training, work-sharing and the reduction in working time, the promotion of new job-creating activities and the importance of reducing the costs of employment, in particular the arrangements for taxing labour and calculating social security contributions which can discourage employment, particularly of young people.

The White Paper notes that there must be a change of attitude if the Community is to find suitable remedies for the problems of employment and growth and is to enable its economy to adapt to a constantly changing economic environment. It maintains that the measures designed to create jobs are inseparable from those aimed at reviving growth and improving international competitiveness. Loss in competitiveness leads to loss in market share and hence to job losses. It stresses that the search for competitiveness must not be to the detriment of the Community's objectives of prosperity and social progress.

The target of creating at least 15 million new jobs would halve the present rate of unemployment, based on an annual rate of employment creation of about 2.5 per cent between 1995 and 2000. However, because the labour force in the Community is expected to increase in this period, this figure will not be sufficient, and to bring down unemployment, much more is needed: a combination of higher growth but with an increased employment content. The White Paper thus looks to a growth rate of at least 3 per cent a year from the mid-1990s, structural changes as regards the competitiveness of Community industry and changes in the employment environment.

The White Paper suggests a number of ways in which a stable macroeconomic framework could provide for stronger

growth. It mentions a reduction of interest rates and of public deficits, an increase in public saving, and wage and price stability. A strategy to improve competitiveness must henceforth be based on intangible aspects, including investing in human capital. Community industry should concentrate on those areas where it possesses competitive advantages, i.e. high-value-added products and services, as this would result in jobs being created mainly in highly specialised areas in sectors exposed to international competition.

The White Paper then identifies five issues as being essential to improve the working environment: education and training policies, improving the functioning of labour markets including greater deregulation (thus greater employer freedom), the possibility of work sharing and the reduction in average working time, an active employment policy, promoting jobs to meet new needs, and the reduction of labour costs. On the issue of labour costs, it maintains that social contributions, which on average account for more than 40 per cent of all labour costs on the Community as compared to 20 per cent in Japan and 30 per cent in the US, should be cut by between one and two points of GDP in the medium-term. The cuts could be partially financed by contributions of the newly-employed, savings in unemployment benefits resulting from lower unemployment (a case of boot-strapping here) and from savings in public spending. Revenue could also come from environmental taxes, taxation of income from financial capital (both already the subject of Commission proposals) and consumer taxes.

Initial reaction to the White Paper was mixed, particularly as regards financing the package, including possible duplication with the mission of the European Investment bank as regards funding the trans-European networks. Others wondered whether it was not just a job-creation scheme although President Delors insisted that the trans-European networks were a medium-term project for strengthening European competitiveness.

At the Brussels summit of December 10-11, 1993, the European Council expressed support for the White Paper but it appeared to stifle the plan's core, the borrowing programme to finance the trans-European networks by referring to the EcoFin Council the question of borrowing internationally the 8 billion

Ecu necessary to arrive at the 20 billion Ecu budget for investment in the networks.

The figure of 15 million new jobs posited in the White Paper was abandoned and instead the European Council speaks of 'reversing the trend and then, by the end of the century, significantly reducing the number of unemployed,' without pledging specific goals. The Council also showed little enthusiasm for making any concrete commitment to embark on the projects or carry out other parts of the programme relating to job creation.

The conclusions of the Brussels summit stress the importance *at national level* of continuing education, flexibility within enterprises and on the labour market, economically sound solutions for the reorganisation of work (which must not aim at generalised redistribution of work but towards internal adjustments compatible with improved productivity), targeted reductions of indirect labour costs, notably as regards those on less qualified work which could be compensated in other ways (tax measures possibly relating inter alia to the environment are mentioned), a stabilisation of statutory contributions and a reduction of the tax burden. There should also be measures to help young people and information for job-seekers.

At Community level, the Council was broadly favourable to the trans-European networks but with respect to funding, referred to the EcoFin Council as noted above. The research programme is to be supported to the tune of 12 billion Ecu, with a possible reserve of one billion Ecu being released later. There is considerable emphasis placed on the importance of the social dialogue. Finally, the Council provided for a *monitoring procedure* to take place each year in December, to take stock of the results of the action plan and to take any measures deemed necessary to achieve the objectives set by the European Council. The exercise will be carried out on the basis of reports from the Commission (as regards job creation, the annual report on the operation of the internal market and a statement on the progress of the trans-European networks in the spheres of transport and energy and on the implementation of the operational programme in the area of information infrastructures), the Council (on the lessons to be drawn from national employment policies, possibly accompanied by proposals for new guidelines)

and the annual report from the EcoFin Council on the implementation of the broad economic-policy guidelines.

The conclusions of the European Council meeting in Corfu on June 24-25, 1994 did not add anything concrete in terms of supporting the plan, save as regards holding out hope for the financing of trans-European networks.

It can be seen therefore that not all the Plan was accepted, nor was it rejected in its entirety. Work on the White Paper is to become an annual exercise, and it will, in the words of the Conclusions of the Presidency at the Brussels summit, provide "a reference point for future work." It is unfortunate that financing of the trans-European networks dominated discussions, and overshadowed the visionary part of the Delors document concerning growth and competitiveness. These connected issues should have been dealt with together with unemployment. They remain on the agenda, whether the European Council likes it or not. Moreover, apart from the networks, concrete action at national rather than Community level remained the focus, despite the recognition of interdependence at the October special summit quoted above.

If the plan succeeds, even as modified by the European Council, it will crown President Delors' contributions to the Community, following the Single European Act and single market programme, and the Treaty on European Union. The Community needs the plan to succeed if it is to remain competitive, if it is to grow, and if the terrible social illness of unemployment is not to grow and fester. Unemployment has more than economic costs. As the Commission pointed out in the "reference document" accompanying its Green paper on Social Policy, the situation is now becoming socially dangerous. The cost of unemployment is higher than the cost of unemployment benefits. It has to be reckoned with in terms of poverty, ill-health, social unrest, drugs, violence and social exclusion. Unemployment wastes our greatest asset - our people.

IX. PREPARATION OF THE 1996 INTER-GOVERNMENTAL CONFERENCE

The European Council meeting in Corfu on June 24-25, 1994 took a series of important decisions concerning the prepa-

ration of the 1996 Inter-governmental Conference.¹³⁴ It established a Reflection Group to prepare for the Conference consisting of representatives of the Ministers of Foreign Affairs of the Member States and the President of the Commission. It is to be chaired by a person appointed by the Spanish Government and will begin its work in June 1995. Two European Parliament representatives will participate in the work of the group, and there will also be exchanges of views with the other institutions and organs of the Union.

The Reflection Group is to examine ideas for the revision of the TEU and other possible improvements. It will also, in the context of the enlargement of the Union, elaborate options on the institutional questions set out in the Ioannina Agreement: weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other necessary measures. The Reflection Group will report to the European Council at the end of 1995, when the Presidency of the European Council will be held by Spain.¹³⁵

CONCLUSION

As the Union, and the internal market, becomes increasingly attractive when seen from the outside, when seen from the inside, by its own citizens, it seems costly, complex, remote and with an unclear purpose. Whereas the 1992 process leading to the creation of the single market is easily understood and an almost universally shared aim, political union, described by President Delors in the Delors II document as being "the main objective of the European venture," is not. The end of the cold war may also have changed the way in which Europeans view the Community. Its political vocation no longer appears so necessary to some. Moreover, events such as the lack of consensus between the Member States during the Gulf war are identified

¹³⁴ AGENCE EUROPE, No. 6260, June 26, 1994, 15.

¹³⁵ The presidency rotates in turn between all the Member States for a term of six months. In the crucial period between the time of writing and the 1996 IGC, an unusually strong sequence of Member States, will hold the Presidency: Germany (second half, 1994), France (first half, 1995) and Spain (second half, 1995), Italy (first semester, 1996) and Ireland (second semester, 1996). It should be noted Article N TEU imposes an obligation to convene the conference in 1996, but there is no obligation to conclude the IGC in that year.

as demonstrating the impossibility of European cooperation in the fields of foreign policy and defence.

If these comments are an accurate reflection of part, at least, of prevailing sentiment (which as noted above may change quite rapidly) it is easy to understand why the TEU fails to inspire consensus or enthusiasm, and why other plans to cure the Union's economic ills are likely to face opposition. The TEU is both too technical as regards monetary union, and too tentative as regards political union. Other plans to revivify the Community such as the Delors White Paper rely on a support for the twin concepts of European integration and solidarity which simply may not be there in the changed climate referred to above. Moreover, proposed in recessionary times, it is an extremely costly programme.

However, although the TEU is imperfect, nevertheless, like the SEA, it is a concrete and important step forward. What is needed now is political leadership which can show the value and necessity of political integration even after the single market has been achieved. A mere act of faith will not be enough. What is also needed is patience. Events have moved so quickly, and the Community has been so successful that we tend to forget how far we have come in the last decade, since the White Paper on the completion of the single market and the SEA. As President Delors remarked in the Delors II document, "we are on the way to pulling off the gamble." When meeting its rendezvous with itself in 1996, the Union should not forget that.

Closer European integration is an increasingly complex goal, particularly bearing in mind the difficult challenge of incorporating the economies of Central and Eastern Europe into the Union. The 1996 conference will bring the Union into the next century. It must find an acceptable balance between those countries like the United Kingdom, Denmark and perhaps Italy, who would like to see the pace of integration slowed down, and others who wish to see it increased. The decision-making procedure must be improved: the achievement of European integration should not be subject to uncertain compromises such as that contained in the Ioannina Compromise. A resolution of the institutional issues raised by enlargement, which will be the subject of study by the Reflection Group, is essential. The ideal of a united Europe will take time to realise, but it is one worth

pursuing. The Union is based upon a respect for the rule of law, a tradition of democracy, and respect for fundamental human rights. These values must not be lost in the struggle to meet the challenges of the future.